

Decision 05-08-007 August 25, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C.J. Villalobos, et al.,

Complainants,

vs.

Grand Oaks Water Company,

Defendant.

Case 97-01-003
(Filed January 2, 1997)

Order to Show Cause why Grand Oaks Water Company's owners Brit O. Smith and Phillip L. Shirley, should not be fined for failure to comply with Commission order.

Investigation 97-06-037
(Filed June 25, 1997)

**INTERIM OPINION ON NORMALIZING THE OWNERSHIP
AND OPERATION OF GRAND OAKS WATER COMPANY**

I. Summary

Today's decision requires California Water Service Company (CWS) to take appropriate steps to normalize the status of the Grand Oaks Water Company (Grand Oaks). Grand Oaks, which effectively was abandoned by its owners more than eight years ago, has been operated on an emergency basis by an affiliate of Dominguez Water Company (Dominguez), and subsequently by CWS, with which Dominguez merged. (See Decision (D.) 00-05-047.) However, neither Dominguez nor CWS has filed an application for the transfer of

ownership of Grand Oaks despite our direction in D.97-08-067 that Dominguez file such an application within 90 days of the effective date of that decision.

Prudence and our concern for the welfare of Grand Oaks' customers require that we provide not only for the day-to-day operation of its system but also for ownership and management committed to long-term planning and investment as needed. Today's decision requires CWS to file an application to acquire Grand Oaks, as discussed below. Pending further order, CWS shall continue to operate Grand Oaks.

II. Background

Grand Oaks is a Class D (500 or fewer service connections) water utility serving Grand Oaks Estates near Tehachapi. It is small even by Class D standards, currently with only 43 connections and a moratorium on new connections. It was also, at the time these consolidated proceedings began, in violation of orders of the California Department of Health Services, and water pressure in the system was so low that several customers were unable to flush their toilets.

Consequently, the Commission issued an emergency order (D.97-08-067) authorizing Dominguez to operate Grand Oaks under contract, as Dominguez had agreed to do upon the grant of such authority.¹ The Commission also noted in D.97-08-067 that the owners were willing to sell Grand Oaks to Dominguez and that Dominguez was willing to buy it. In discussing this possibility, the Commission said:

¹ Extracts from D.97-08-067, including a detailed history of the system problems, attempted mediation, and three evidentiary hearings in 1997, are attached to today's decision.

“We believe that customers’ best interest will be served if Dominguez eventually buys the system from Grand Oaks. Accordingly, we direct the owners of Grand Oaks and Dominguez to file an application for the transfer of ownership of Grand Oaks within 90 day[s] of the effective date of this order.” (*Id.*, mimeo., p. 4.)

D.97-08-067 was the last formal action taken in these proceedings, however, Dominguez did not file an application, as anticipated in D.97-08-067, nor has CWS done so since it merged with Dominguez. CWS did tell our Water Division staff, in a letter dated June 12, 2004, that CWS was trying to contact the owner’s estate to complete transfer of the transfer of the water system. But formally, Grand Oaks’ owners of record, whom we had found to be “either unwilling or unable to operate the system,” are still in charge. That anomalous situation will continue until we receive and approve an application for transfer of ownership.

Having received no application or other formal filing, we required a “status report” from CWS. (See Administrative Law Judge’s (ALJ) Ruling issued March 28, 2005, and served on all parties to these proceeding and representatives of CWS). Our stated intent was “to spur efforts to put a long-term solution in place and to resolve these very old proceedings.”

Prior to CWS’ status report, the Commission received a letter dated April 1, 2005, from Brit O. Smith, who our records show was one of the two owners (along with Phillip L. Shirley) when Dominguez assumed operation of Grand Oaks.² Smith says, among other things, that he has “no knowledge

² The purchase of Grand Oaks in 1990 by Smith and Shirley was authorized in D.90-06-052.

regarding any water company,” that he personally has “not been involved” in a water company, that Phillip Shirley died about five years ago, and that “Shirley had Dominquez [sic] take over his water company because, as with all of his projects, he never took responsibility for managing any business properly.”

CWS’ status report acknowledges that before the Dominguez merger with CWS in 2000, “Dominguez was willing to acquire Grand Oaks and to operate the water system under contract, pending the acquisition. Additionally, one of the Grand Oaks co-owners testified that he and the other owner were, in fact, willing to sell the system to Dominguez. As we know now, Dominguez acquisition of Grand Oaks was never consummated.” However, CWS “is not interested in acquiring Grand Oaks or its water system.” CWS cites three reasons for its current disinterest:

- CWS’ acquisitions “typically” have been in close proximity to an existing CWS system, which Grand Oaks is not.
- After the Commission fined CWS for irregularities in certain small water system acquisitions (see D.04-07-033), CWS has “soured” on its “Good Samaritan” approach to such acquisitions.
- The incentives the Commission has provided (see D.99-10-064) for large (Class A) water utilities to acquire small, troubled Commission regulated water utilities are inadequate.

The status report concludes on a more positive note by proposing (as an alternative to the incentives in D.99-10-064) a different regulatory mechanism that would allay CWS’ concerns about the acquisition. Upon Commission approval of this mechanism, CWS “will take all necessary and reasonable measures to acquire the Grand Oaks water system.”

III. Discussion

The history of this consolidated proceeding, including the recent letter from Brit Smith, gives us no reason to change our earlier finding that Grand Oaks' owners of record are "unwilling or unable to operate the system." The order to show cause commencing our investigation contemplated imposition of fines on the owners, but sanctions would serve little purpose at this point. One of the named individual respondents has died, and the other (Brit O. Smith), while disavowing any knowledge of or involvement with Grand Oaks, has pledged to cooperate if the Commission needs "more information or help to get [Grand Oaks'] ownership cleared up." Our primary task at this point is to ensure that qualified and responsible ownership takes charge of Grand Oaks as soon as reasonably possible.

We acknowledge and express our appreciation for Dominguez and CWS stepping in to operate Grand Oaks. Since our emergency order in D.97-08-067, complaints about the water system have stopped, although we understand there is still a moratorium on new hookups that causes concerns. More fundamentally, we want to see an end to the "emergency" that has now persisted almost eight years. Even if current operations are satisfactory, with the passage of time, a water utility will need to borrow or invest funds to replace or upgrade its system. Day-to-day operation and maintenance of the system, while clearly necessary, do not encompass these long-term objectives.

CWS' status report is somewhat disappointing. CWS is silent on whether it has encountered impediments in dealing with the surviving owner or the deceased owner's estate. Neither Dominguez nor CWS filed an application to acquire Grand Oaks, as contemplated by D.97-08-067, nor did either of them petition to modify that decision. CWS is silent on these omissions, although the

Commission decisions CWS criticizes came two or more years after D.97-08-067, and therefore cannot explain why the acquisition did not occur. In short, CWS through its merger with Dominguez has certain responsibilities under D.97-08-067 that it has not yet discharged.

Apart from these observations regarding the status report, we welcome CWS' proposal for a regulatory mechanism under which it would be willing to acquire Grand Oaks. The next step is an application by CWS. The application would ensure that we fully understand the proposed regulatory mechanism and would provide opportunity for input from Grand Oaks' ratepayers. Finally, the application would resolve the murky situation characterizing the current ownership of Grand Oaks.³ We will direct CWS to file this application within 90 days from the effective date of today's decision, and to continue operating Grand Oaks pending further order. Upon the filing of that application, these consolidated dockets (Case 97-01-003 and Investigation 07-06-037) will be closed.

IV. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

V. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Steven Kotz is the assigned ALJ in this proceeding.

³ Based on Brit Smith's letter, we will direct Smith to join in CWS' application for the transfer of Grand Oaks to CWS and to cooperate fully in resolving ownership issues.

Findings of Fact

1. By emergency order, Grand Oaks has been operated under contract by Dominguez, and subsequently by CWS when it merged with Dominguez. The emergency order was issued about eight years ago, after the Grand Oaks' water system was effectively abandoned by its owners of record.

2. Of Grand Oaks' two owners of record, named as individual respondents in this investigation, one is deceased and the other now disclaims knowledge of or involvement with the Grand Oaks water system.

3. The current emergency authorization to operate this water system is a short-term expedient. Over time, a water system will require borrowed or invested funds as appropriate to ensure adequate water supply and quality. Thus, Grand Oaks needs a qualified and responsible owner for the long term.

4. Dominguez had indicated its willingness to acquire Grand Oaks, and CWS is currently willing to acquire Grand Oaks, provided that the Commission approves a regulatory mechanism set forth in CWS' status report.

5. An application for approval of the transfer of Grand Oaks from its current owners to CWS would be the appropriate forum for considering CWS' proposed regulatory mechanism, receiving input from Grand Oaks' ratepayers, and resolving issues regarding the current ownership.

Conclusions of Law

1. It is in the public interest that Grand Oaks be acquired as soon as reasonably possible by a qualified and responsible owner.

2. Based on the record to date, CWS appears to be the likeliest candidate to acquire Grand Oaks. The Commission should review CWS' proposed regulatory mechanism as part of an application by CWS to acquire Grand Oaks.

3. CWS should be required to file, within 90 days of the issuance of today's order, an application for the transfer of ownership of Grand Oaks.

4. Brit O. Smith, as the survivor of the two persons authorized by D.90-06-052 to purchase Grand Oaks, should be required to join in CWS' application and to otherwise cooperate with CWS in resolving ownership issues.

5. Until further order of the Commission, CWS should be required to continue to operate the Grand Oaks water system.

6. Today's order should be made effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. California Water Services Company (CWS) shall file, within 90 days of the effective date of today's order, an application for approval of the transfer to CWS of the Grand Oaks Water Company (Grand Oaks). Brit O. Smith shall join in CWS' application and shall otherwise cooperate with CWS in resolving ownership issues that may have arisen since the purchase of Grand Oaks by Brit O. Smith and Phillip L. Shirley.

2. Until further order of the Commission, CWS shall continue to operate the Grand Oaks water system.

3. Upon the filing of CWS' application, as set forth in Ordering Paragraph 1, Case 07-01-003 and Investigation 97-06-037 shall be closed; however, the record in those proceedings may be referenced, as provided in Rule 72 of the Commission's Rules of Practice and Procedure, as may be appropriate to facilitate consideration of CWS' application.

This order is effective today.

Dated August 25, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

ATTACHMENT

**Extracts from Decision 97-08-067
(Interim Emergency Order)**

On June 20, 1990, the Commission issued D.90-06-052 in Application (A.) 89-11-005 which authorized Brit O. Smith and Phillip L. Shirley to purchase Grand Oaks. The decision ordered Grand Oaks not to serve additional customers without an order from the Commission authorizing such an expansion. At the time of acquisition of Grand Oaks by Brit O. Smith and Phillip Shirley, Grand Oaks was serving 38 customers.

On January 2, 1997, C. J. Villalobos et al. (complainants) filed a complaint (Case (C.) 97-01-003) against Grand Oaks contending that the quality of service provided by Grand Oaks was below normal standards. Specifically, complainants stated that flow rate, quality, and pressure of water provided by Grand Oaks were unacceptable to them.

In response to the complaint, Administrative Law Judge (ALJ) Sheldon Rosenthal conducted a mediation meeting in Tehachapi which was attended by complainants and Phillip L. Shirley. While Brit O. Smith did not attend the mediation meeting, he informed ALJ Rosenthal, by a letter dated January 22, 1997, that he no longer was an owner of Grand Oaks.

ALJ Rosenthal's effort at mediation was unsuccessful. Accordingly, the matter was set for an evidentiary hearing in Tehachapi on March 19, 1997 before ALJ Garde.

During the evidentiary hearing, it became evident that Grand Oaks not only needed system improvements immediately, but that Grand Oaks was also in violation of several orders of the California Department of Health Services

(DHS). DHS has imposed fines in excess of \$6,000 on Grand Oaks which Grand Oaks has not paid.

Phillip L. Shirley agreed to make the needed improvements within 30 days and to provide the needed water samples to DHS for testing.

The ALJ directed the Water Division project manager, Daniel Paige, to prepare and present, at a subsequent hearing, a report on the progress of system improvements that Phillip L. Shirley agreed to put in place.

A second evidentiary hearing was held on May 8, 1997, in Tehachapi at which Daniel Paige testified that other than fixing a few minor leaks, Grand Oaks has not made any of the agreed-upon improvements to the system. Daniel Paige also testified that Grand Oaks had added four more customers in violation of D.90-06-052. Daniel Paige recommended that Grand Oaks be fined pursuant to Public Utilities Code § 2107 for violating this Commission order.

Based on the evidence provided at the two evidentiary hearings, the Commission issued an order (I.97-06-037) requiring the owners of Grand Oaks to show cause why they should not be fined for these violations.

A third evidentiary hearing consolidating C.97-01-003 and I.97-06-037 was held in Techachapi on July 24, 1997, during which Brit O. Smith and Dominguez filed appearances. Phillip L. Shirley did not attend the hearing.⁴

Based on the testimony provided during the third evidentiary hearing, it became evident that water pressure in the system is inadequate to allow several customers to flush their toilets and that Phillip L. Shirley has neglected to maintain the system. It also became evident that there is an immediate need to

⁴ According to Brit O. Smith's statement, Phillip L. Shirley was unable to attend the hearing due a breakdown of his vehicle.

take corrective steps to improve the system by finding a qualified operator for the system.

Dominguez agreed to buy the Grand Oaks' system. However, because the acquisition process cannot be completed immediately, Dominguez has agreed to operate the system through a contract with the owners of Grand Oaks if the Commission grants it the authority to do so.

In his testimony, co-owner, Brit O. Smith requested that the Commission not impose any fines on the owners of Grand Oaks and stated that he is willing to sell the system to Dominguez for a nominal charge of \$1.00. In addition, Brit O. Smith agreed to enter into a contract with Dominguez allowing Dominguez to operate the Grand Oaks' system. Brit O. Smith stated that he will be able to convince Phillip L. Shirley to sign the contract for the operation of the system by Dominguez and to agree to sell the system to Dominguez.

Discussion

Based on the testimony received, it is evident that there is an immediate need to take corrective steps to alleviate the service problems faced by Grand Oaks' customers. The owners of Grand Oaks are either unwilling or unable to operate the system. It appears that for all practical purposes the owners of Grand Oaks have abandoned the system.

There is an immediate need to find a qualified operator for the system. Dominguez is a Class A water company in good standing with the Commission. It is qualified and willing to operate the system. We will authorize Dominguez to operate the Grand Oaks water system.

We believe that customers' best interest will be served if Dominguez eventually buys the system from Grand Oaks. Accordingly, we direct the owners of Grand Oaks and Dominguez to file an application for the transfer of ownership of Grand Oaks within 90 days of the effective date of this order.

(END OF ATTACHMENT)